

## **ARTICLE XI. OTHER POST EMPLOYMENT BENEFITS TRUST.**

### **Sec. 33-158. Definitions.**

In this Article, the following words and phrases have the following meanings:

- (a) *Board*: The Board of Investment Trustees established under Article III.
- (b) *Contribution*: payment made to the Trust Fund by the County.
- (c) *Custodian*: The Director of Finance.
- (d) *Investment manager*: a person or entity who exercises discretion to manage all or part of the assets of an institutional investor.
- (e) *Participating Agency*: an agency eligible to participate in County benefit plans under Section 20-37(b) which elects to participate in any County retiree benefit plan.
- (f) *Retiree benefit plan*: any retiree medical plan, dental plan, vision plan, or life insurance plan administered by the Chief Administrative Officer.
- (g) *Trust Fund*: the Retiree Health Benefits (RHB) Trust Fund established to pay all or part of the benefits provided under any retiree benefit plan.

### **Sec. 33-159. Establishment of Trust.**

- (a) *County Retiree Benefit Plans*. The Chief Administrative Officer must include the terms of any retiree benefit plan, including eligibility and benefits, including those benefits collectively bargained, in a plan document. All benefits must meet any applicable Federal or State requirement. Subject to the County's obligations under collective bargaining agreements and the collective bargaining laws, to the extent applicable, the Chief Administrative Officer may amend a plan document at any time. Subject to the County's obligations under collective bargaining agreements and the collective bargaining laws, to the extent applicable, any retiree benefit plan may be terminated at any time for any reason. No retiree benefit is guaranteed, except as expressly provided by a contract entered into by the County.
- (b) *Establishment of Trust*. An Other Post Employment Benefits Trust, known as the Retiree Health Benefits (RHB) Trust, effective July 1, 2007, is established to fund all or a portion of benefits provided under the County retiree benefit plans. The Trust is intended solely as a funding mechanism to pay for County retiree benefits provided under the terms of any retiree benefit plan, and does not create any obligation by the County to provide any benefit listed in any County retiree benefit plan. Any participant in a retiree benefit plan, any current or former County employee, or any current or former participating agency employee, has no right to any asset in the Trust fund. The Trust Fund may be, but is not required to be, the sole source of funding for any County retiree benefit plan.
- (c) *Type of Trust*. The County intends that the Trust Fund:
  - (1) be used to perform its essential government function of providing benefits,

including health and life insurance benefits, to participants and eligible dependents; and

- (2) qualify as a tax exempt trust under Internal Revenue Code Section 115.
- (d) *Assets of Trust Fund.* All contributions and all earnings and other additions, less payments, constitute the assets of the Trust Fund.
- (e) *Exclusive Benefit.* The Trust Fund must be held for the exclusive benefit of participants in retiree benefit plans and eligible dependents, and used only to provide benefits and defray reasonable expenses of administering retiree benefit plans. Trust Fund assets must not revert to the County unless the County terminates all retiree benefit plans. Some funds may partially revert to the County if at least one benefit plan is terminated under Section 33-166.

#### **Sec. 33-160. Board of Trustees.**

*Management.* The Board of Investment Trustees established under Section 33-59 is responsible for managing the Trust Fund. The Board must hold legal title to all assets of the Trust Fund, but may transfer some incidents of ownership to the Board's agents as provided in this Article. The powers and duties of the Board under this Article are not effective until the Board members have accepted the Trust Fund in writing. Within 10 days after the Council confirms a Board member, the member must certify in writing to the Chief Administrative Officer that the member accepts the Trust Fund and will administer its affairs with care, skill, prudence, and diligence.

#### **Sec. 33- 161. Contributions and payments.**

- (a) *County Contributions.* The County may contribute to the Trust Fund those amounts that the Council appropriates. The County is not required to make any contribution to the Trust Fund unless a written contract with one or more beneficiaries so requires.
- (b) *Acceptance of Contributions.* The Board must accept all contributions deposited in the Trust Fund and held by the custodian as Trust Fund property. The Board is not responsible for calculating or collecting any contribution, but is only responsible for contributions deposited to the Trust Fund and amounts held in the Trust Fund.
- (c) *Payments.* Payments may be made from the Trust Fund in those amounts directed by the Chief Administrative Officer only to pay for all or part of the benefits provided by any County retiree benefit plan, administrative expenses relating to a retiree benefit plan and expenses of the Trust Fund. The Board is not liable for any payment directed by the Chief Administrative Officer and is not required to confirm compliance with any retiree benefit plan.
- (d) *Expenses.* The Board must be reimbursed for expenses solely incurred in the administration of the Trust Fund and must pay from the Trust Fund expenses reasonably incurred by the Chief Administrative Officer to administer any County retiree benefit plan to the extent that those expenses have not been paid by the County. The Board may pay expenses incurred under Section 33-162(h)(11) without direction of the Chief Administrative Officer.

#### **Sec. 33-162. Trust Fund management.**

- (a) *General.* The Board has the exclusive authority to manage the Trust Fund's assets. All powers and duties required to manage the Trust Fund are vested in the Board by this Article.
- (b) *Procurement.* Chapter 11B does not apply to the procurement of goods and services by the Board for the Trust Fund.
- (c) *Transfer agents.*
  - (1) The Board may register any assets in its own name or in the name of a nominee. The Board or its agent must keep records that show that the investments are part of the Trust Fund.
  - (2) The Board may form a partnership under State law to hold or transfer assets as the Board's nominee.
  - (3) The Board may designate in writing a trustee to hold or transfer assets as the Board's nominee.
  - (4) The Board must provide that any trustee or partnership that the Board designates must act only as agent of the Board. The Board may set other conditions that the Board finds prudent.
  - (5) Any trustee or partnership that the Board designates may retain the services of a bank or other financial institution to conduct business.
  - (6) The Board must maintain the indicia of ownership of the Trust Fund's assets within the jurisdiction of the United States federal courts, except as authorized in regulations that the Executive adopts under method (2). Those regulations must be substantially equivalent to federal regulations under the Employee Retirement Income Security Act (ERISA) regarding indicia of ownership of plan assets.
- (d) *Authorized investments.*
  - (1) The Board may invest or permit an investment manager to invest the assets of the Trust Fund in any investment it considers prudent within the Board's policies, except as otherwise prohibited in this Section. The Board must use an investment manager except when making an investment in any type of pooled investment vehicle, including any combined, common, or commingled trust fund, retirement or annuity contract, mutual fund, investment company, association or business trust. The Board also may authorize the Board staff to make investments in pooled investment vehicles and transition assets from one investment manager to another investment manager.
  - (2) The Board or any investment manager must not invest in real property, including securities based on ownership or other interests in real property, unless the investment is a pooled investment in which the Board has no power to manage the real property. A pooled investment must not invest more than 10 percent of its assets in real property located in the County. This 10 percent limit applies to

the market value of the total assets on the preceding June 30. If the market value of investments in real property in the County exceeds the 10-percent limit as a result of market forces, the Board or the investment manager need not sell an existing equity investment. The Board may obtain valuations and take appropriate steps to comply with this 10-percent limit.

- (3) If an investment through any combined, common, or commingled trust fund exists, the declaration of trust of that fund is a part of the Trust Fund.
- (4) The Board and any investment manager must not invest any Trust Fund asset in any bond, note, or debt instrument issued by:
  - (A) the County;
  - (B) a political subdivision in the County; or
  - (C) an agency supported by bond issues underwritten by the County.

However, the Board or any investment manager may invest plan assets in bonds, notes, and debt instruments of any of these entities if the investment is held indirectly through a mutual fund or other pooled, investment vehicle and complies with any limit in the Internal Revenue Code.

- (e) *Written Policies.* The Board must establish an investment policy and guidelines appropriate for the Trust Fund, and may review and change the policy and guidelines as necessary. The Board must establish such other written policies to administer and invest funds under this Article and transact the Trust's business.
- (f) *Investment Manager.*
  - (1) Except as provided in subsection (d)(1), the Board must appoint one or more investment managers to invest all or part of the RHB trust fund assets consistent with applicable guidelines. If the Board has properly appointed an investment manager, the Board is not liable for any act or omission of the manager and is not otherwise responsible for the investment of funds allocated to the investment manager.
  - (2) Any investment management contract must provide that when the investment manager is making individual investment selections, the investment manager must make individual investment selections subject to applicable Board policies. In any contract, the Board may limit the investment of a specified portion of the Trust Fund to a certain type of property. In any contract, the Board may delegate to the investment manager any power or discretion conferred on the Board under this Article and may assign to the investment manager custody and control of certain Trust Fund assets. The fees charged by any manager are expenses of the Trust Fund.
  - (3) The Board must monitor the performance of each investment manager and may terminate any appointment. Monitoring may include any tests or analyses that the Board finds prudent in the circumstances to assure the Trust Fund's stability

and growth.

- (g) *Available Cash.* The Board may keep cash available in an amount it finds prudent to pay benefits and expenses. The Board may keep cash on deposit in one or more banks or trust companies organized under the laws of any state or the United States, but the amount on deposit in any bank or trust company must not exceed 25% of the paid-in capital and surplus of that bank or trust company.
- (h) *Board Powers.* Except as otherwise provided in this Article, the Board may:
  - (1) buy or subscribe for any investment with any cash, at a premium or discount, and retain the investment;
  - (2) sell, exchange, convey, transfer, lease for any period, pledge, mortgage, grant options, contract with respect to, or otherwise encumber or dispose, at public or private sale, for cash or credit or both, any part of the Trust Fund;
  - (3) subject to Section 33-165(h)(2), sue, defend, compromise, arbitrate, compound, and settle any debt, obligation, claim, suit, or legal proceeding involving the Trust Fund, and reduce the rate of interest on, extend or otherwise modify, foreclose upon default, or otherwise enforce any debt, obligation, or claim;
  - (4) retain a part of the Trust Fund assets uninvested in preparation for distributions;
  - (5) exercise any option on any investment for conversion into another investment, exercise any right to subscribe for additional investments, and make all necessary payments;
  - (6) join in, consent to, dissent from, oppose, or deposit in connection with the reorganization, recapitalization, consolidation, sale, merger, foreclosure, or readjustment of the finances of any corporation or property in which the assets of the Trust Fund are invested, or the sale, mortgage, pledge or lease of that property or the property of any such corporation on any terms that the Board finds prudent; exercise any options, make any agreements or subscriptions, pay any expenses, assessments, or subscriptions, and take any other action in connection with these transactions that the Board finds prudent; and accept and hold any investment issued in or as a result of any such proceedings;
  - (7) vote, in person or by proxy, at any election of any corporation in whose stock the assets of the Trust Fund are invested, and exercise, personally or by any power of attorney, any right appurtenant to any investment held in the Trust Fund, and give general or specific proxies or powers of attorney with or without power of substitution.
  - (8) sell at a public or private sale, enter into an option to sell, mortgage, lease, partition, or exchange any real property at prices and for terms that the Board finds prudent. The Board may execute and deliver deeds of conveyance and all assignments, transfers, and other legal instruments to pass ownership to a buyer, free and discharged of all liens;
  - (9) renew or extend any mortgage, on any terms that the Board finds prudent, and

increase or reduce the rate of interest on any mortgage or modify the terms of any mortgage or of any guarantee as the Board finds prudent to protect the Trust Fund or preserve the value of the investment; waive any default or enforce any default in a manner that the Board finds prudent; exercise and enforce any right of foreclosure, bid on property in foreclosure, take a deed in lieu of foreclosure with or without paying a consideration, and release the obligation on the bond secured by the mortgage; and exercise and enforce in any legal action any right or remedy regarding any mortgage or guarantee;

- (10) form a corporation or partnership under the laws of any jurisdiction, or acquire an interest in or otherwise make use of any corporation or partnership already formed to invest in and hold title to any property;
  - (11) incur and pay expenses for agents, financial advisors, actuaries, accountants, and legal counsel, if those expenses are incurred solely to perform the Board's duties under the Trust;
  - (12) borrow, raise or lend money for the purpose of the Trust Fund, in any amounts and on any terms and conditions as the Board in its discretion finds prudent; for any money borrowed, issue a promissory note and secure the repayment of this note by pledging or mortgaging all or part of the Trust Fund;
  - (13) hold, buy, transfer, surrender, and exercise all other incidents of ownership of any insurance or annuity contract; and
  - (14) do any act that the Board finds necessary and exercise the power of this Article to manage the Trust Fund. The Board may exercise all powers to manage the assets that an individual could exercise to manage property owned by that individual.
- (i) *Prohibited Transactions.* The Board must not engage in any transaction between the Trust and the County or any entity controlled by the County or a participating agency in which the Board:
- (1) lends any part of its income or corpus without receiving adequate security and a reasonable rate of interest;
  - (2) pays any compensation more than a reasonable allowance for salaries or other compensation or services actually rendered;
  - (3) makes any service available on a preferential basis;
  - (4) makes any substantial purchase of securities or other property for more than adequate consideration;
  - (5) sells any substantial part of its securities or other property for less than adequate consideration; or
  - (6) engages in any transaction which results in a substantial diversion of its income or corpus.

**Sec. 33-163. Board duties and responsibilities.**

- (a) *Duty of Care.* The Board must discharge its duties with respect to the Trust Fund:
  - (1) only in the interest of the participants in retiree benefit plans and eligible dependents;
  - (2) only to provide benefits to participants in retiree benefits plans and to defray reasonable expenses of administering and operating the Trust Fund;
  - (3) with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;
  - (4) by diversifying the investments of the Trust Fund to minimize the risk of large losses, unless it is clearly not prudent to diversity under the circumstances; and
  - (5) in accordance with the laws, policies, and instruments governing the Trust.
- (b) *Records.* The Board must maintain accurate and detailed accounts of each investment, receipt, disbursement, and other transaction, including any specific record required by law, separate accounting for participating agencies and any additional record it finds necessary. All accounts, books and records are subject to applicable State laws governing maintenance and disclosure of public records.
- (c) *Annual Accounting.* The Trust Fund fiscal year is the same as the County fiscal year. On or before January 1 of each year, the Board must file with the Chief Administrative Officer a written account, listing each investment, receipt, disbursement, and other transaction during the preceding fiscal year or during the period from the close of the last preceding fiscal year to any interim date that the Board selects. The account must include a list of the Trust Fund assets and the current fair market value of each asset at the end of that period. The account must include the separate accounts of the participating agencies. If a current fair market value is not available for or does not apply to a particular investment, the Board must assign a value to that investment. The Board must apply the investment valuation method on a consistent basis. If the Board changes the investment valuation method, the Board must notify the Executive and Council of the change.
- (d) *Ethics.* The Board is subject to Chapter 19A. A Board member must not:
  - (1) be a party to any transaction engaged in by the Board or an investment manager involving the assets of the Trust Fund.
  - (2) use the gains or profits of the Trust Fund for any purpose except to make investments or payments authorized by the Board;
  - (3) deal with the assets of the Trust Fund for the member's own interest or account;
  - (4) act in any transaction involving the Trust Fund on behalf of a party whose interests are adverse to the interests of the Trust Fund or the interests of participants or beneficiaries of the Trust Fund; or

- (5) become an endorser or surety, or in any manner an obligor, for money loaned to or borrowed from the Board.

**Sec. 33-164. Custodian.**

- (a) *General.* The Director of Finance is the custodian of the Trust Fund assets. The Director must give bond with a surety and for a period and in an amount as the Board determines. Each payment from the Trust Fund must be made by the Director, the Director's designee, or 2 persons designated by the Board acting jointly. The Board must file a copy of its resolution designating the 2 persons, with specimen signatures of those persons, with the Director to confirm their authority to make payments.
- (b) *Contracts.* If the Board approves, the Director of Finance may make written contracts with banks, trust companies, insurance companies or investment companies authorized to do business in any state for the safe custody of investments, banking services, the payment of benefits and expenses, and any other function necessary to manage and safeguard the assets of the Trust Fund.
- (c) *Procurement.* Chapter 11B does not apply to the procurement of goods and services for the Trust Fund by the Director of Finance.

**Sec. 33-165. Indemnification of Board Members.**

- (a) *General.* The County must indemnify each member of the Board who is or may become a party to any legal action, including any administrative or investigative proceeding, because of service as a Board member, subject to the conditions in this Section.
- (b) *Standards; payments.*
  - (1) The County must indemnify a Board member:
    - (A) with respect to civil matters, if the member acted in good faith and in a manner that the member reasonably believed to be in the best interest of the Trust Fund; and
    - (B) with respect to criminal matters, if the member had no reasonable cause to believe that the member's conduct was unlawful.
  - (2) If the County indemnifies a Board member under this Section, the County must indemnify the member for any expense when the member incurs the expense, including:
    - (A) reasonable attorney fees;
    - (B) judgments;
    - (C) damages;
    - (D) fines; and



(E) settlements.

- (c) *Effect of Terminating any legal action.* The termination of any legal action does not, by itself, create a presumption that a Board member did not act in good faith and in a manner reasonably believed to be in the best interest of the Trust Fund. The termination of a criminal proceeding does not, by itself, create a presumption that a Board member had reasonable cause to believe that any conduct was unlawful.
- (d) *Exceptions.* The County must not indemnify a Board member if:
  - (1) the member is found by a court or other tribunal to be liable for gross negligence or willful and wanton misconduct in the performance of a duty to the Trust Fund; or
  - (2) liability arises from an action that occurred before the date when all Board members accepted the Trust Fund in writing.
- (e) *Recovery of Payments.* If the County Attorney finds that any indemnification payment was made that was outside the scope of the indemnification allowed under this Section, the County Attorney must take appropriate action on behalf of the County to recover that payment.
- (f) *Insurance Provided.* The County must provide insurance for each Board member against any liability asserted against or incurred by the member with respect to service on the Board. Assets of the Trust Fund must not be used to pay any premium. The County may self-insure, wholly or partly, for this purpose. If the County does not provide adequate insurance coverage or indemnification under this Section, a Board member need not pay any amount attributable to liability incurred by serving on the Board and the County must pay any amount due.
- (g) *Defenses.* The County may assert the defenses of governmental immunity, and any other available defense, in any legal action arising out of the actions of the Board.
- (h) *County Attorney.*
  - (1) The County Attorney must determine whether a Board member is eligible for indemnification with respect to any matter and the reasonableness of any fee, expense, or settlement.
  - (2) Unless the County Attorney approves the settlement, a Board member cannot settle a claim against another Board member using:
    - (A) County funds;
    - (B) funds of a Participating agency;
    - (C) funds provided by a self-insurance program of the County; or
    - (D) funds provided under a policy the County has with an insurance

company. (2008 L.M.C., ch 3, § 1.)

**Sec. 33-166. Amendment and Termination.**

- (a) *Termination.* Except on termination, no part of the Trust Fund may revert to the County or a participating agency or be used for any purpose other than the exclusive benefit of participants of a retiree benefit plan. If all County retiree benefit plans are terminated and all benefit claims and expenses are paid, any remaining assets in the Trust Fund relating to contributions made by the County and participating agencies must revert to the County and the participating agencies. The Trust Fund must terminate in its entirety on the earlier of the termination of all County retiree benefit plans or the depletion of the Trust Fund. Funds may partially revert to the County or participating agencies if one or more retiree benefit plans is terminated. When a County retiree benefit plan is terminated, the assets in the Trust Fund attributable to that plan after expenses and benefits have been paid must revert to the County and the participating agencies as provided in the adoption agreement.
- (b) *Amendments.* Any provision of this Article may be amended at any time. No amendment may:
  - (1) authorize any part of the Trust Fund to be used for any purpose other than the exclusive benefit of participants of retiree benefit plans and eligible dependents; or
  - (2) cause or allow any part of the Trust Fund to revert to or become the property of the County, except as provided in Sections 33-166(a) or 33-167.
- (c) *Compliance with Applicable Law.* The Council may amend the Trust at any time, retroactively if required, if found necessary to conform to any requirement of State law, the Internal Revenue Code or any similar act or any amendments or corresponding regulations or applicable guidance.

**Sec. 33-167. Participating Agencies.**

- (a) *Participating Agencies.* An agency permitted to participate in County benefit plans under Section 20-37(b) which chooses to participate in a retiree benefit plan must participate in the Trust Fund. However, a participating agency must be eligible to participate under Internal Revenue Code Section 115. Each participating agency in the Trust Fund must execute an adoption agreement in a form satisfactory to the Chief Administrative Officer and must submit any information the Chief Administrative Officer requires. Except for any obligation to refund assets under subsection (b), legal liability must not accrue to the County by including any participating agency in the Trust Fund. Each participating agency must be fully responsible for its pro rata cost of coverage, including any required annual contribution to the County and its share of administrative expenses.
- (b) *Termination of Participating Agency.* If a participating agency decides to terminate participation in a retiree benefit plan and the Trust Fund, the agency must notify the Chief Administrative Officer in writing. The Chief Administrative Officer and the participating agency must agree on a date to end the agency's participation. Any transfer of assets from the Trust Fund resulting from the termination of an agency's participation

must comply with the Internal Revenue Code and the adoption agreement between the County and the participating agency.

**Sec. 33-168. Protection from Creditors.**

Any asset held by the Trust Fund is not subject to any creditor of the County and is exempt from execution, attachment, prior assignment, or any other judicial relief or order for the benefit of any creditor or third person.